

STATE OF INDIANA       )  
                                  )SS:  
COUNTY OF LA PORTE    )

IN THE LA PORTE SUPERIOR COURT NO. 4

2007 TERM

CAUSE NO. 46D04-0608-MI-253

OUTLOOK COVE, LLC       )  
Plaintiff                    )  
                                  )  
                                  )vs.                            )  
                                  )  
DEPARTMENT OF NATURAL    )  
RESOURCES, RHONDA SIMS,   )  
THOMAS SIMS and NATURAL   )  
RESOURCES COMMISSION OF   )  
THE STATE OF INDIANA,     )  
Defendants                    )

### **ORDER**

This matter came on for hearing the 9<sup>th</sup> day of October, 2007. Petitioners appeared by their attorney, Edward L. Volk. Respondent, Department of Natural Resources, appeared by Attorney April Lashbrook. Defendants, Thomas Sims and Rhonda Sims, appeared in person and by their attorney, Stephen R. Snyder. Arguments heard.

The Court, having had this matter under advisement, now enters the following Findings and Order:

1. This Court has subject matter jurisdiction over that general class of proceedings to which this cause of action belongs.
2. A person is only entitled to judicial review of an administrative decision if he or she satisfies the conditions of Indiana Code § 4-21.5-5-2.<sup>1</sup>

---

<sup>1</sup> Indiana Code § 4-21.5-5-2 states in pertinent part:  
(b) Only a person who qualifies under:

3. In the present case, petitioners have standing as a party to the agency proceedings which led to the agency decision.<sup>2</sup>

4. Petitioners have exhausted the available administrative remedies which qualifies them for judicial review.<sup>3</sup>

5. The petition for judicial review was filed within 30 days of notice of the agency's action.<sup>4</sup>

6. The Petitioners timely filed the agency record in accordance with Indiana Code § 4-21.5-5-13.<sup>5</sup>

7. Judicial review of administrative decisions is very limited.<sup>6</sup>

8. Deference is to be given by the reviewing court to the expertise of the administrative body.<sup>7</sup>

9. Discretionary decisions of administrative bodies are entitled to deference absent a showing that the decision was arbitrary and capricious, or an abuse of discretion, or otherwise not in accordance with law.<sup>8</sup>

- 
- (1) section 3 of this chapter concerning standing;
  - (2) section 4 of this chapter concerning exhaustion of administrative remedies;
  - (3) section 5 of this chapter concerning the time for filing a petition for review;
  - (4) section 13 of this chapter concerning the time for filing the agency record for review; and
  - (5) any other statute that sets conditions for the availability of judicial review;

is entitled to review of a final agency action.

<sup>2</sup> Ind. Code § 4-21.5-5-3 (2007).

<sup>3</sup> Ind. Code § 4-21.5-5-4 (2007). The petitioners appealed the ALJ's decision to the Administrative Orders and Procedures Act (AOPA) Committee on June 9, 2006. Agency Transcript and Record at 262. The AOPA Committee affirmed the ALJ's decision on July 19, 2006. Agency Transcript and Record at 232.

<sup>4</sup> Ind. Code § 4-21.5-5-5 requires any party requesting judicial review to file within 30 days of receipt of notice of the agency's action. The petition for judicial review was filed on August 17, 2006 29 days after the final decision of the AOPA Committee.

<sup>5</sup> Indiana Code § 4-12.5-5-13 requires the petitioner to file the record of agency decision within 30 unless an extension of time is granted by the court. Petitioners filed a motion for a 90 day enlargement of time within 30 days which was granted by the court on September 6, 2006. Subsequently, the Petitioners filed the agency record with the court on December 5, 2006, exactly 90 days after the extension of time was granted.

<sup>6</sup> *City of Greenwood v. Dowler*, 492 N.E.2d 1081, 1084, reh'g denied (Ind.App. 1986); *City of Indianapolis v. Woods*, 703 N.E.2d 1087, 1090 (Ind.App. 1998).

<sup>7</sup> *City of Greenwood v. Dowler*, 492 N.E.2d 1081, 1085, reh'g denied (Ind.App. 1986); *City of Indianapolis v. Woods*, 703 N.E.2d 1087, 1090 (Ind.App. 1998).

<sup>8</sup> *Id.*

10. Further, review is limited to determining whether the administrative body adhered to proper legal procedure and made a finding based upon substantial evidence in accordance with appropriate constitutional and statutory provisions.<sup>9</sup>

11. A reviewing court may not substitute its judgment for that of the administrative body without a showing that the action of the administrative body was arbitrary and capricious.<sup>10</sup> A court reviewing an administrative agency's decision is limited to a finding of whether the decision is supported by substantial evidence, whether it was arbitrary and capricious, and whether it was in contravention of constitutional, statutory, or legal principles.<sup>11</sup>

12. A case under judicial review of an agency determination must be confined to the agency record and the court may not, at any time, try the cause de novo or substitute its judgment for that of the agency.<sup>12</sup> The court must analyze the record as a whole to determine whether the administrative findings are supported by substantial evidence.<sup>13</sup>

13. The General Assembly specifically set out the burden of the parties, the standard of review, and the duties of the court in reviewing an Order of an administrative agency at Indiana Code 4-21.5-5-14.<sup>14</sup>

<sup>9</sup> *City of Greenwood v. Dowler*, 492 N.E.2d 1081, 1085, reh'g denied (Ind.App. 1986); *City of Indianapolis v. Woods*, 703 N.E.2d 1087, 1090 - 1091 (Ind.App. 1998).

<sup>10</sup> *Id.*

<sup>11</sup> *Ind. Fam. and Soc. Serv. Admin. v. Hospitality House of Bedford*, 704 N.E.2d 1050, 1059 (Ind. App. 1998).

<sup>12</sup> I.C. 4-21.5-5-11; *Ind. Dept. of Nat. Res. V. Untied Refuse Co.*, 615 N.E. 2d 100 (Ind. 1993).

<sup>13</sup> *Id.*

<sup>14</sup> I.C. 4-21.5-5-14. *Burden of demonstrating invalidity of agency action Standards for determining validity Findings of fact Granting of relief upon determination of prejudice.*

- (a) The burden of demonstrating the invalidity of agency action is on the party to the judicial review proceeding asserting invalidity.
- (b) The validity of agency action shall be determined in accordance with the standards of review provided in this section, as applied to the agency action at the time it was taken.
- (c) The court shall make findings of fact on each material issue on which the court's decision is based.
- (d) The court shall grant relief under section 15 [IC 4-21.5-5-15] of this chapter only if it determines that a person seeking judicial relief has been prejudiced by an agency action that is:
  - (1) Arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
  - (2) Contrary to constitutional right, power, privilege, or immunity;
  - (3) In excess of statutory jurisdiction, authority, or limitations, or short of statutory right;
  - (4) Without observance of procedure required by law; or

14. Petitioners Outlook Cove, LLC and Outlook Cove Homeowners Association (hereinafter “Outlook Cove”) correctly assert that to fall under the jurisdiction of the Natural Resources Commission, the body of water known as Outlook Cove must be subject to the requirements of the *Lakes Preservation Act*, codified at I.C. 14-26-2-1, *et. seq.* and its administrative provisions located in Article 11 of Title 312 of the Indiana Administrative Code.

15. Outlook Cove asserts that the body of water known as “Outlook Cove is not a freshwater lake, is certainly not a public freshwater lake, nor is it part of Pine Lake.”<sup>15</sup>

16. The issues presented by Petitioners for review were stated in the Petitioners’ Brief as follows:<sup>16</sup>

(1) Is the body of water known as Outlook Cove a public freshwater lake under the jurisdiction of the Natural Resources Commission?

(2) Were the following actions of the Natural Resources Commission arbitrary and capricious:

- A. Relying on the 1956 Chamber of Commerce Map of LaPorte Indiana to depict the boundaries of Pine Lake.
- B. Striking the Affidavit of Donald Porter.
- C. Ignoring the Affidavit of Charles Hendricks.
- D. Ignoring the Affidavit of Dr. Greg Olyphant.

17. As it pertains to issue (1), Outlook Cove contended:<sup>17</sup>

- A. The 1949 Order of the LaPorte Circuit Court, Cause No. 22084 excludes the area known as Outlook Cove from the definition of Pine Lake.
- B. Historical aerial photographs from the Indiana Archives confirm the judgment of the LaPorte Circuit Court Order of 1949 and prove that Outlook Cove is distinct and separate from Pine Lake.
- C. Petitioners hold legal title to the land over which Outlook Cove flows, making the land private and not subject to the Commission’s jurisdiction.

---

(5) Unsupported by substantial evidence.

<sup>15</sup> *Brief of Petitioners Outlook Cove, LLC and Outlook Cove Homeowners Association* (hereinafter “*Outlook Cove Brief*”), p. 7.

<sup>16</sup> *Outlook Cove Brief*, p. 3-4.

<sup>17</sup> *Id.* at 3.

18. As it pertains to issue (1) hereinabove, Respondent Indiana Department of Natural Resources contends that the following facts and evidence support the decision of the Administrative Law Judge (hereinafter “ALJ”) and the Administrative Orders and Procedures Act Committee (hereinafter “AOPA”):<sup>18</sup>

- A. Pine Lake and Outlook Cove have been accessed by the public through the acquiescence of riparian owners.<sup>19</sup>
- B. Pine Lake and Outlook Cove are connected without obstruction.<sup>20</sup>
- C. The legal elevation of Pine Lake is 796.2 feet above sea level.<sup>21</sup>
- D. The shoreline formed by the water of Pine Lake at an elevation of 796.2 feet forms an uninterrupted close that includes Outlook Cove.<sup>22</sup>

19. The AOPA determined that Pine Lake in LaPorte County, Indiana is a “public freshwater lake.”<sup>23</sup> There is nothing in the record to suggest otherwise, and the record suggests that Outlook Cove does not contest that Pine Lake is a “public freshwater lake.”<sup>24</sup>

20. The AOPA’s determination that Pine Lake in LaPorte County, Indiana is a “public freshwater lake” is not arbitrary or capricious, an abuse of discretion or otherwise not in accordance with law. Nor is it contrary to constitutional right, power, privilege, or immunity; nor is it a determination made in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; made without observance of procedure required by law; or unsupported by substantial evidence.

---

<sup>18</sup> *The Indiana Department of Natural Resources’ Response to the Brief of Petitioners Outlook Cove, LLC and Outlook Cove Homeowners (sic) Association*, p. 4.

<sup>19</sup> *Admin. Record* at 275-76, 505-06.

<sup>20</sup> *Id.* at 275, 514, Map H.

<sup>21</sup> *Id.* at 278, 493; *see also* I.C. 14-26-4-9(c).

<sup>22</sup> *Admin. Record* at 230 (map indicating that a channel between Outlook Cove and Pine Lake exists when the water is at an elevation two feet below the legal elevation), 278; *see also Id.* at 275, 507-10 (warranty deeds for the Sims’ property – on Outlook Cove – indicating the legal limit of Pine Lake to be 796.2 feet).

<sup>23</sup> *Gardner v. Department of Natural Resources and Taggart, et. al.*, 7 Caddnar 192 (1997).

21. Within definitions set forth in both I.C. 4-26-2-3(a) and 312 IAC 11-2-17, a "public freshwater lake" includes, "a lake that has been used by the public with the acquiescence of a riparian owner."<sup>25</sup> Neither Pine Lake nor the body of water known as Outlook Cove fit within any listed exception to the definition of "public freshwater lake" set forth in either I.C. 4-26-2-3(a) or 312 IAC 11-2-17.

22. In his Affidavit, Thomas Sims stated:

I have observed the use of Pine Lake by the public for more than 20 years. The area of Pine Lake known as Outlook Cove, on which my property borders, has been routinely used by the public for boating, fishing and swimming. Numerous persons have requested access to the lake through my property and I have routinely permitted this. I have rented my property to members of the general public who have utilized the waters adjacent thereto for boating, fishing and swimming. At no time have I ever witnessed any person prevent or attempt to prevent the use of the area of Pine Lake known as Outlook Cove by members of the general public.<sup>26</sup>

Fronting on the area of Pine Lake known as Outlook Cove, there exists a marina containing a significant number of piers projecting into the area known as Outlook Cove. This marina is used by the general public for the purpose of docking boats and access directly to Pine Lake. The exact location of the marina is clearly depicted on the aerial photos attached hereto.<sup>27</sup>

---

<sup>24</sup> Admin. Record at 276.

<sup>25</sup> For purposes of this Act, a public freshwater lake is defined in I.C. 4-26-2-3, as follows:

4-26-2-3. *Public freshwater lake defined.*

(a) As used in this chapter, public freshwater lake means a lake that has been used by the public with the acquiescence of a riparian owner.

(b) The term does not include the following:

(1) Lake Michigan.

(2) A lake lying wholly or in part within the corporate boundaries of any of the three (3) cities having the largest population in a county having a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000).

(3) A privately owned body of water:

(A) Used for the purpose of; or

(B) Created as a result of;

surface coal mining.

For purposes of this Act, a public freshwater lake is defined in 312 IAC 11-2-17, as follows:

Sec 17. "Public freshwater lake" means a lake that has been used by the public with the acquiescence of a riparian owner.

The term does not include any of the following:

(1) Lake Michigan.

(2) (2) A lake lying wholly or in part within the city of East Chicago, Gary, or Hammond.

(3) A privately owned body of water used for the purpose of, or created as a result of, surface coal mining.

<sup>26</sup> Admin. Record at 505.

<sup>27</sup> Id. at 506.

23. The assertions made by Thomas Sims in his Affidavit appear to be uncontroverted in the record.

24. In the AOPA's Final Order the committee appears to have relied on both the assertions of Thomas Sims and the aerial photographs referred to hereinabove in determining that Outlook Cove has been used by the public with consent of riparian owners.<sup>28</sup>

25. Outlook Cove contends that the 1949 Order of the LaPorte Circuit Court establishes both the legal elevation and boundaries of Pine Lake, and excludes the area known as Outlook Cove.<sup>29</sup>

26. The 1949 Order was issued pursuant to what is now Indiana Code § 14-26-4-8, which requires that an appropriate judgment establish both the level and area of a lake.<sup>30</sup>

27. However, the statute in effect at the time the 1949 Order was entered did not require the circuit court to make a finding on the area or the shoreline of the lake in question.<sup>31</sup>

28. Indiana Code § 14-26-4-9 states that the findings and judgments made by the a court must be kept in the office of the clerk of the circuit court and be taken as conclusive evidence in any court of all matters contained within the record.<sup>32</sup>

29. In support of their contention that the 1949 Order is conclusive of the area of Pine Lake, the Petitioners argue that § 14-26-4-9 required the AOPA to take their Exhibit C, which contains the 1949

---

<sup>28</sup> Id. at 275-76.

<sup>29</sup> *Outlook Cove Brief*, p. 9-10.

<sup>30</sup> Ind. Code § 14-26-4-8 (2007).

<sup>31</sup> The text of the original statute which authorized circuit courts to establish water levels by judicial proceeding can be found at 1947 Acts c. 350 § 1. That section states in pertinent part:

The Department of Conservation of the State of Indiana is hereby authorized and empowered to establish, by appropriate monuments, the average normal water level of all natural and artificial lake of the State of Indiana. . . . The court shall on said day fixed in said notice... hear all evidence submitted respecting said matter by [Department of Conservation]and also by any other agency of government or any affected landowners, shall make his findings and render appropriate judgment on the evidence submitted establishing such monuments for the purposes herein stated.\

Note that there is no mention of the court's or the Department of Conservation's authority or duty to establish a legal area of a lake within the State of Indiana.

Order and the Department of Conservation's briefing, as conclusive of the area of Pine Lake.<sup>33</sup>

30. In its 1949 Order, the Circuit Court of LaPorte County, Indiana established the normal level of Pine, Stone and Lily lakes at 796.2 feet (elevation, mean sea level datum, and/or 6.20 feet as shown on a staff water gage of the U.S. Geological Survey in said lake.<sup>34</sup>

31. The court also found that the highest elevation to which the water of said lake had arisen within the ten years preceding that measurement was 797.09 feet (elevation, mean sea level datum, and/or 7.09 feet as shown on a staff water gage of the U.S. Geological Survey in said lake.<sup>35</sup>

32. The court further found that an appropriate monument should be located on the line of said lakes in NW 1/4, Sec. 34, T 37 N, R 3 W, at the east end of the highway bridge over the channel connecting Pine and Stone lakes, on Waverly Beach Road in LaPorte, LaPorte County, Indiana on property in the city limits of the City of LaPorte, and that said monument should be marked with the above elevations.<sup>36</sup>

33. The aforementioned information contained in the Circuit Court's Order of 1949 was included in the Report filed by the Indiana Department of Conservation concerning the proposed establishment of water levels for Pine, Stone and Lilly Lakes.<sup>37</sup>

34. Also included by reference in the aforementioned Report was Exhibit A,<sup>38</sup> which went into greater detail concerning the depth and consistency of the respective lakes governed by the Circuit Court's Order of 1949, including but not limited to the measured or estimated surface areas of Pine Lake,

---

<sup>32</sup> Indiana Code § 14-26-4-9 states in pertinent part "Certified copies of the record of the judgment of the court as kept in the office of the clerk of the circuit court and of the records recorded in the office of the county recorder shall be received in evidence in any court in Indiana as conclusive evidence of all matters contained in the records.

<sup>33</sup> *Outlook Cove Brief*, p. 10.

<sup>34</sup> Admin. Record at 493.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.* at 493-96.

<sup>38</sup> *Id.* at 495.



Stone Lake and Hennessee Marsh, and Lilly Lake. None of this information was either directly included or incorporated by reference in the Circuit Court's Order of 1949.<sup>39</sup>

35. Also included as part of the Report as Exhibit B, is a sketch purporting to be a "Map of Stone and Pine Lakes with Pertinent Data."<sup>40</sup> This sketch or map was neither directly included nor incorporated by reference in the Circuit Court's Order of 1949.

36. There is no evidence or finding by the AOPA that the records kept in the office of the clerk of the circuit court contained all the information in Petitioners Exhibit C.

37. The 1949 Order only makes a finding on the legal elevation of Pine, Stone, and Lilly Lakes but makes no finding on the area of any of the lakes.<sup>41</sup>

39. Indiana Code § 14-26-4-9 states that the "record of judgment of the court" will be determinative of all matters in the record.<sup>42</sup>

40. This Court believes that the AOPA's conclusions on this issue suggest that the AOPA interpreted the "record of judgment of the court" to mean only the court's order, which, in the present case, does not include a finding on the area of Pine Lake. This Court finds that such a conclusion is not arbitrary or capricious, an abuse of discretion or otherwise not in accordance with law. Nor is it contrary to constitutional right, power, privilege, or immunity; nor is it a determination made in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; made without observance of procedure required by law; or unsupported by substantial evidence.

41. Moreover, the AOPA found that historical drawings, photographs, or other depictions of a lake while probative of a lake's shoreline are not determinative for three reasons.<sup>43</sup>

A. Graphics of a lake while not at its legal elevation do not accurately depict the

---

<sup>39</sup> *Id.*

<sup>40</sup> *Id.* at 496.

<sup>41</sup> *Id.* at 493.

<sup>42</sup> Ind. Code § 14-26-4-9.

<sup>43</sup> Admin. Record at 241.

shoreline a lake.

B. Principles of riparian common law, accretion and erosion, can change the shoreline of a lake over time.

C. By Indiana statute construction of any manmade channel must be accompanied by a dedication of any new shoreline and/or water area created to the state.

42. As a result, the APOA further found that the drawing of Pine Lake in the 1949 Order was dispositive of the legal elevation but not the shoreline of Pine Lake created by that water elevation.<sup>44</sup>

43. The AOPA's determination that the drawing contained in the 1949 Department of Conservation's Report illustrated the legal elevation of Pine Lake but did not determine the current area of Pine Lake was not arbitrary or capricious, an abuse of discretion or otherwise not in accordance with law. Nor is it contrary to constitutional right, power, privilege, or immunity; nor is it a determination made in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; made without observance of procedure required by law; or unsupported by substantial evidence.

44. The AOPA followed the previous Natural Resource Commission precedent in *Herr v. Department of Natural Resources* in stating that the Lakes Preservation Act required that any manmade channels into public lakes be accompanied by a dedication of the newly-formed waters to the state as part of the original body of water.<sup>45</sup>

45. The AOPA found that the un-contradicted evidence showed that at the legal water elevation the continuous shoreline of Pine Lake includes Outlook Cove.<sup>46</sup>

46. The AOPA, in Paragraph No. 41 of its Findings of Fact and Conclusions of Law With Final Order, found that Outlook Cove was an integral part of Pine Lake and thus a "public freshwater lake" for purposes of the Lakes Preservation Act.<sup>47</sup>

---

<sup>44</sup> Id.

<sup>45</sup> Id. at 240.

<sup>46</sup> Id. at 241.

<sup>47</sup> Id.

47. The AOPA's determination that Outlook Cove is part of Pine Lake was not arbitrary or capricious, an abuse of discretion or otherwise not in accordance with law. Nor is it contrary to constitutional right, power, privilege, or immunity; nor is it a determination made in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; made without observance of procedure required by law; or unsupported by substantial evidence.

48. Petitioners urge that it was arbitrary and capricious for the ALJ to strike Donald Porter's entire affidavit.<sup>48</sup>

49. The ALJ found that Mr. Porter's affidavit should be stricken for the following reasons:<sup>49</sup>

- A. It does not provide adequate basis to assure that it rests upon a reliable foundation.
- B. A reasonable determination could not be made as to whether the affidavit was relevant to the task at hand.
- C. There is no evidence to show the affiant was competent to testify to the conclusions stated in the affidavit.

50. Part of the Petitioners' argument was that Outlook Cove as a separate body of water was not subject to the NRC's jurisdiction because it was a privately owned lake.<sup>50</sup>

51. Further, in order to prove that it was a privately owned lake the Petitioners offered Mr. Porter's affidavit to show that the surrounding land owners' deeds included the land which Outlook Cove flows over.<sup>51</sup>

52. Outlook Cove further asserts that the ALJ was correct in excluding any conclusions in the affidavit which required expertise in the Lake Preservation Act or riparian rights generally.

53. Outlook Cove further asserts that it was error for the ALJ to exclude the portions of the affidavit that pertained to reading the land titles of the owners that surround Outlook Cove because:<sup>52</sup>

---

<sup>48</sup> Outlook Cove Brief p. 15-16.

<sup>49</sup> Admin. Record at 463-65.

<sup>50</sup> Outlook Cove Brief p. 11-14.

- A. Mr. Porter laid a foundation for those statements by stating that he had examined the titles of several of the landowners surrounding Outlook Cove.
- B. The affidavit was relevant to the Petitioner's argument that if Outlook Cove was a separate body of water it was a privately owned lake.
- C. Mr. Porter showed he was competent to testify by stating that he was a local attorney with experience and expertise in reading land titles

54. However, the ALJ and AOPA's findings of law, as adopted by this Court, rendered ownership of the land beneath Outlook Cove irrelevant, and as such, it was harmless error for the ALJ to strike Mr. Porter's affidavit in its entirety.

55. The ALJ's striking of Mr. Porter's affidavit, while in error, was harmless error because Outlook Cove was not prejudiced by the decision, and as such it does not warrant disturbing the ALJ's or the AOPA's findings and conclusions.

56. The Petitioners also take issue with the AOPA's decision to ignore the affidavits of Mr. Charles Hendrick and Dr. Greg Olyphant.<sup>53</sup>

57. The affidavits of Mr. Hendricks and Dr. Olyphant were not stricken and were admitted into evidence.

58. As previously stated, a reviewing court may not substitute its judgment for that of the administrative body without a showing that the action of the administrative body was arbitrary and capricious.<sup>54</sup>

59. It would be improper for this court to reexamine what weight should be given to Mr. Hendricks' and Dr. Olyphant's affidavit.

---

<sup>51</sup> *Id.* at 11-12.

<sup>52</sup> *Id.* at 15-16.

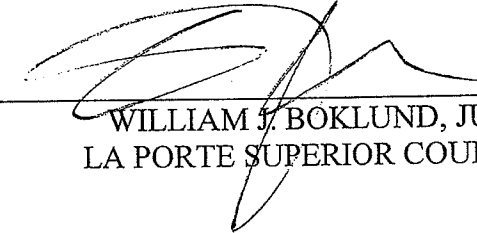
<sup>53</sup> *Id.* at 16-19.

<sup>54</sup> *City of Greenwood v. Dowler*, 492 N.E.2d 1081, 1085, reh'g denied (Ind.App. 1986); *City of Indianapolis v. Woods*, 703 N.E.2d 1087, 1090 (Ind.App. 1998).

60. The AOPA's decision to ignore Mr. Hendricks' and Dr. Olyphant's affidavit was not arbitrary or capricious, an abuse of discretion or otherwise not in accordance with law. Nor is it contrary to constitutional right, power, privilege, or immunity; nor is it a determination made in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; made without observance of procedure required by law; or unsupported by substantial evidence.

61. The Court will not undertake a de novo review of the case to give greater weight to Mr. Hendricks' and Dr. Olyphant's affidavit.

WHEREFORE, IT IS ORDERED AND ADJUDGED that Outlook Cove's "Verified Petition for Judicial Review of a Final Order of the Natural Resources Commission" be, and is hereby, denied in all respects, and the findings and conclusions drawn by the Administrative Law Judge and the Administrative Orders and Procedures Act Committee are hereby affirmed in all respects.



---

WILLIAM J. BOKLUND, JUDGE  
LA PORTE SUPERIOR COURT NO. 4